

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at WINCHESTER

NATHANAEL L. JACKSON, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	Case No. 4:13-cv-61
v.)	
)	Judge Mattice
TENNESSEE WALKING HORSE)	Magistrate Judge Lee
NATIONAL CELEBRATION, INC., <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
)	

ORDER

On August 26, 2013, Plaintiff filed his Complaint (Doc. 2), Motion for Leave to Proceed in forma pauperis (Doc. 1), and Motion for Appointment of Attorney (Doc. 3). On October 3, 2013, United States Magistrate Judge Susan K. Lee filed an Amended Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), addressing Plaintiff's Motion for Leave to Proceed in forma pauperis. (Doc. 6). Magistrate Judge Lee recommended that Plaintiff be denied pauper's status and that he be assessed the \$400 filing fee. (*Id.* at 3). Judge Lee based this recommendation on the fact that "Mr. Jackson's monthly income appears to exceed his monthly expenses and his monthly expenses appear to include a number of non-necessities." (*Id.*).

Plaintiff has filed no objections to the Magistrate Judge's Report and Recommendation.¹ Nevertheless, the Court has reviewed *de novo* the record in this

¹ Magistrate Judge Lee specifically advised Plaintiff he had 14 days in which to object to the Report and Recommendation and that failure to do so would waive his right to appeal. (Doc. 6); *see Fed. R. Civ. P. 72(b)(2); see also Thomas v. Arn*, 474 U.S. 140, 148-51 (1985) (noting that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings").

matter, and it agrees with the Magistrate Judge's well-reasoned conclusions. Judge Lee's Report and Recommendation did not address Plaintiff's Motion for Appointment of Attorney, and the Court will now turn to the merits of that Motion.

In his Motion for Appointment of Attorney, Plaintiff requests that the Court appoint him an attorney because he "foresees a highly contested case with numerous motions and hearings." (Doc. 3). Under 28 U.S.C. § 1915(e)(1), "the Court may request an attorney to represent any person unable to afford counsel." Appointment of an attorney in a civil matter is left to the discretion of the Court and "will be overturned only when the denial of counsel results in fundamental unfairness impinging on due process rights." *Reneer v. Sewell*, 975 F.2d 258, 261 (6th Cir. 1992) (internal quotations omitted). In ruling on a motion to appoint counsel, district courts can consider "plaintiff's financial resources, the efforts of plaintiff to obtain counsel, and whether plaintiff's claim appears to have any merit." *Henry v. City of Detroit Manpower Dep't*, 763 F.2d 757, 760 (6th Cir. 1985).

For the same reasons Plaintiff's Motion for Leave to Proceed in forma pauperis will be denied, Plaintiff's Motion for Appointment of Attorney (Doc. 3) will also be denied. Plaintiff's monthly income exceeds his expenses, including expenses that are non-necessities. (Doc. 6). Thus, Plaintiff's available income gives him the financial resources to obtain his own counsel. Additionally, Plaintiff filed both his Complaint and Motion for Appointment of Attorney on August 26, 2013, showing little effort to obtain counsel on his own. Because Plaintiff has not made effort to obtain his own counsel and has adequate financial resources, the Court will not assess the merits of Plaintiff's underlying claim. Plaintiff's Motion for Appointment of Attorney (Doc. 3) will be **DENIED**.

Accordingly, the Court **ACCEPTS** and **ADOPTS** Magistrate Judge Lee's findings of fact and conclusions of law. Plaintiff's Motion for Leave to Proceed in forma pauperis (Doc. 1) is hereby **DENIED** and he **SHALL** be assessed the \$400 filing fee. Plaintiff's Motion for Appointment of Attorney (Doc. 3) is also **DENIED**.

SO ORDERED this 21st day of October, 2013.

/s/ Harry S. Mattice, Jr.

HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE